

The Honorable John C. Coughenour

UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA,  
Plaintiff

v.

NICHOLAS “NIKKI” ARMSTRONG,  
Defendant.

NO. CR19-243 JCC

GOVERNMENT’S RESPONSE TO  
DEFENDANT’S MOTION TO MODIFY  
CONDITIONS OF RELEASE

The United States of America, by and through Brian T. Moran, United States Attorney for the Western District of Washington, and Marie M. Dalton, Assistant United States Attorney, files this response in opposition to Defendant Nicholas “Nikki” Armstrong’s Motion to Modify Conditions of Release (Dkt. 14). The motion requests the Court to direct the U.S. Probation Office not to test for the defendant’s use of marijuana in order to allow the defendant to use prescribed medical marijuana. As detailed below, regardless of the bona fides of Ms. Armstrong’s medical condition or her registered nurse practitioner’s belief that medical marijuana may be beneficial, federal law forecloses this request and the motion should be denied.

## ARGUMENT

Federal law is clear: the possession and use of marijuana—regardless of claimed medical necessity—is a crime. As a result, Ms. Armstrong asks this Court for permission to do what federal law forbids. Under the Controlled Substances Act (“CSA”), the possession of marijuana—even for medical use—is a crime. As a Schedule I substance, federal law categorizes marijuana as one for which there is “no currently accepted medical use in treatment” and a “lack of accepted safety for use . . . under medical supervision.” 21 U.S.C. § 812(b)(1)(B)-(C), (c). As such, its manufacture, distribution, and possession are proscribed save for one exception—government-approved research projects. *Id.* § 823(f); *see also United States v. Oakland Cannabis Buyers’ Cooperative*, 532 U.S. 483, 490 (2001). Possession of marijuana—even though sometimes legal in Washington and even with an otherwise lawfully obtained medical prescription—is thus a federal crime. 21 U.S.C. § 844.<sup>1</sup>

Ms. Armstrong does not cite to or present any authority for a contrary view. And in fact, courts have routinely rejected requests such as the one in the instant case. *See, e.g., United States v. Pai*, 187 F. App’x 719, 721 (9th Cir. 2006) (finding no abuse of discretion in district court’s prohibition on the use of medical marijuana while on supervised release); *United States v. Meshulam*, 2015 WL 894499, at \*4 (S.D. Fla. Mar. 3, 2015) (denying defendant’s request to use medical marijuana while on pre-trial release); *United States v. Harvey*, 794 F. Supp. 2d 1103, 1106-07 (S.D. Cal. 2011) (finding defendant’s use of marijuana under California’s medical marijuana regime constituted a violation of defendant’s conditions of supervision); *United States v. Small*, 2010 WL 4922510, at \*2 (D. Mont. Nov. 29, 2010) (refusing to modify conditions of pre-trial release to allow use of medical marijuana by defendant with medical marijuana card issued by Montana); *United States v. Hicks*, 722 F. Supp. 2d 829, 837 (E.D. Mich. 2010)

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<sup>1</sup> Washington’s legalization of marijuana cannot supplant Congress’s contrary directives. *Gonzalez v. Raich*, 545 U.S. 1, 27 (2005) (“The Supremacy Clause unambiguously provides that if there is any conflict between federal and state law, federal law shall prevail.”)

1 (finding possession of marijuana pursuant to medical marijuana law in Michigan violated  
2 defendant's conditions of supervised release); *United States v. Friel*, 699 F. Supp. 2d 328,  
3 331 (D. Me. 2010) (declining to modify defendant's supervised release to permit the use  
4 of medical marijuana notwithstanding Maine's medical marijuana law).

5 Accordingly, this Court should deny Ms. Armstrong's motion.

6  
7 DATED this 14<sup>th</sup> day of February, 2020.

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9 Respectfully submitted,

10 BRIAN T. MORAN  
11 United States Attorney

12  
13 /s/ Marie M. Dalton  
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CERTIFICATE OF SERVICE

I hereby certify that February 14th, 2020, I have electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the attorney(s) of record for the defendant(s).

/s/ Marwa Hirmendi

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